

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. CR 15-1889 JH

RAYMOND MOYA,
Defendant.

**MOTION TO RECONSIDER THE NOVEMBER 14, 2016 TRIAL
SETTING (DOC. 109)**

Raymond Moya, the defendant herein, by and through his co-counsel, Jerry Daniel Herrera and Amy Sirignano, hereby respectfully requests the Court to reconsider its previous order [Doc. 109] and to continue the trial in this matter beyond the order scheduling trial on November 14, 2016. As grounds for said motion, counsel would show to the court as follows:

1. Defense counsel filed an opposed motion to continue the September 12, 2016 trial setting [Doc. 108] on August 31, 2016, providing both the history of the case and the timeline. As part of its grounds, counsel referenced that it had, at the status hearing on August 16, 2016, encountered extreme difficulty in scheduling expert witnesses for the September 12, 2016 trial date. Counsel requested a setting in January, 2017. Counsel for the government indicated its opposition to a setting beyond November, 2016, due to concerns from the decedent's family and their cooperating witness.

2. To say that defense counsel has struggled to locate an available toxicologist for trial would be an understatement. The Court may recall that defense counsel originally sought the services of Dr. James Valentine, for which the Court provided appropriate funding. Due to an extremely heavy travel and trial schedule, it became apparent that Dr. Valentine would not be available to serve as an expert witness in this case. Whereupon, counsel began a search for another toxicologist. Counsel were fortunate to locate Dr. Steven Pike who resides in Tucson, Arizona. Dr. Pike agreed to review the evidence to determine whether or not he would be able to provide testimony in this case.

3. In our previous motion requesting a January 2017 trial setting, defense counsel referenced that its three experts, Dr. William Foot, Dr. Janine Arvisu and Dr. Steven Pike were all, at various times and in large measure, unavailable to testify in November, 2016. Counsel referenced, in general terms, their unavailability until January, 2017. Specifically, counsel wishes to apprise the Court of their availability as follows:

Dr. Steven Pike indicates that he “brackets” his travel and court appearances in such a fashion that he needs three days per appearance -- day one for travel, day two for trial, and day three for travel. There is no direct flight from Tucson, AZ to Albuquerque, NM. His dates of unavailability in November are: November 15, 16, 17, 18, 19, 20, 21 and 24.

Dr. Janine Arvisu’s dates of availability are November 21 through November 23;

Dr. William Foote is available from November 14th through November 25th but unavailable the last week in November.

Given these time frames, counsel is unable to get a contiguous number of days for expert testimony in November.

In addition, counsel Sirignano is currently slated to appear in Denver, Colorado November 17, 18, and 19 for the annual federal death penalty seminar.

January 2017 presents a more time-friendly scheduling for the defense, as follows:

Dr. Pike is unavailable January 4, 5, 12, 17, 19 and 26, leaving a number of contiguous days available for his appearance.

Dr. Arvisu is available throughout January.

Dr. Foote is unavailable the first week in January.

4. Counsel would also reassert other concerns referenced in their previous motion.

Those concerns include issues relative to extensive medical discovery of the decedent that have not yet been resolved, and other laboratory discovery matters that have not yet been resolved. One of the discovery issues currently unresolved, centers around defense counsel's request for certain specific additional discovery that is necessary to enable the defense experts to adequately analyze and assess toxicology records as well as medical records on the decedent. And so, counsel anticipates filing other motions beyond what have been filed to date.

5. This case is complex and is consuming substantial time both for defense counsel and the defense experts. The parties anticipate that the defense case will be based on the substantial reliance on experts, and possibly substantial litigation, will be required due to the potential novel issues of fact and law.

6. Counsel for the government opposes a continuance beyond November, 2016.

WHEREFORE, defense counsel respectfully request that the Court reconsider the defense motion to schedule this trial in January, 2017, with a setting that would provide a clear time frame for the testimony of Dr. Pike.

Respectfully Submitted,

/s/ electronically submitted

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CERTIFICATE OF SERVICE

I hereby certify that this document was electronically filed using the Court's ECF filing system which disburses copies electronically to parties of record where appropriate on this 15th day of September, 2016.

/s/ Electronically Submitted

JD Herrera